

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

No. 2:12-mc-00076-JPD

The Honorable James P. Donohue

HENDRICKS & LEWIS, PLLC,

Plaintiff,

v.

GEORGE CLINTON,

Defendant.

**CLINTON'S MOTION TO STAY  
PROCEEDINGS PENDING A  
DECISION BY THE  
JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION  
OR, ALTERNATIVELY, TO  
DISMISS THIS ACTION  
AND RELIEVE HIM FROM THE  
APRIL 30, 2012 ORDER FOR LACK  
OF SERVICE UNDER RULE  
12(B)(4), RULE 12(B)(5), AND/OR  
RULE 60(B)(1) AS INADVERTENCE  
OR SURPRISE**

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## INTRODUCTION

Defendant George Clinton (“Clinton”) respectfully moves this Court to temporarily stay further proceedings in this action pending resolution of Clinton’s motion before the Judicial Panel on Multidistrict Litigation (the “Panel”) seeking centralization and transfer of this action and six related actions pursuant to 28 U.S.C. § 1407. As set forth below, courts typically impose stays while motions are pending before the Panel. Moreover, a stay of proceedings in this case is warranted here because the prejudice to Clinton without a stay, coupled with considerations of judicial economy and the risk of inconsistent rulings, far outweighs the possibility of any minimal prejudice to Plaintiff Hendricks & Lewis, PLLC (“H&L”).

## BACKGROUND

H&L instituted this action on April 20, 2012<sup>1</sup>, requesting an order directing Clinton to appear for a Judgment Debtor Exam. On April 30, 2012, this Court directed Clinton to appear to answer concerning certain judgments entered against him in *Hendricks & Lewis, PLLC v. Clinton*, No. 2:10-cv-00253-JCC (W.D. Wash).

On May 14, 2012, Clinton petitioned the Panel to centralize and transfer this action coupled with six others that are now pending in four different federal courts around the country. A Notice of the Panel Motion is filed contemporaneously herewith. Like this action, the other six actions arise out of H&L’s efforts to enforce the judgments against Clinton in *Hendricks & Lewis, PLLC v. Clinton*, No. 2:10-cv-00253-JCC (W.D. Wash).

Pursuant to 28 U.S.C. § 1407, the Panel may transfer multiple actions involving “one or more common questions of fact” to a single district for coordinated or consolidated pretrial proceedings when doing so will serve the “convenience of parties and witnesses and will

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<sup>1</sup> I, George Clinton, state that I was not served with, or had notice of these events until May 6, 2012 when papers were delivered to a New York, New York venue where I was performing. H&L’s filing is an initial pleading that should have been served according to the provisions of Fed. R. Civ. 4. Even if it was proper to file the motion in this matter and serve it pursuant to Fed. R. Civ. P. 5, H&L’s service was ineffective as I was never personally served. Accordingly, this action should be dismissed for improper service.

1 promote the just and efficient conduct of such motions.” On prior occasions, where, as here,  
 2 the issues involved are sufficiently complex and centralization would further judicial economy,  
 3 the Panel has ordered centralization and transfer even if there are as few as two cases. *See, e.g.,*  
 4 *In re First Nat’l Bank, Heavener, Okla. (First Mortgage Revenue Bonds) Sec. Litig.*, 451 F.  
 5 Supp. 995, 997 (J.P.M.L. 1978) (centralization was “necessary, even though only two actions  
 6 are involved, in order to prevent duplicative pretrial proceedings and eliminate the possibility  
 7 of inconsistent pretrial rulings.”); *see also In re Okun*, 609 F. Supp. 2d 1380 (J.P.M.L. 2009)  
 8 (centralizing two actions); *In re Payless ShoeSource, Inc.*, 609 F. Supp. 2d 1372 (J.P.M.L.  
 9 2009) (same); *In re Aetna, Inc.*, 609 F. Supp. 2d 1370 (J.P.M.L. 2009) (same).

### 11 ARGUMENT

12 It is axiomatic that an Article III Court may stay litigation as part of its inherent power  
 13 to “control the disposition of the causes on its docket with economy of time and effort for itself,  
 14 for counsel and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Courts  
 15 routinely exercise this power pending a decision by the Panel. *See, e.g. Good v. Prudential*  
 16 *Ins. Co. Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998) (noting courts “frequently grant stays  
 17 pending a decision by the” Panel); *Rivers v. The Walt Disney Co.*, 980 F. Supp. 1358, 1362  
 18 (C.D. Cal. 1997) (finding that “a majority of courts have concluded that it is often appropriate”  
 19 to issue a stay pending a decision from the Panel).

21 When considering whether to grant a motion to stay pending a decision from the Panel,  
 22 courts consider three factors: (1) judicial economy, *i.e.*, whether judicial resources would be  
 23 saved by avoiding duplicative litigation and inconsistent rulings; (2) hardship and inequity to  
 24 the moving party if the action is not stayed; and (3) potential prejudice to the nonmoving party  
 25 if the case is stayed. *Rivers*, 980 F. Supp. at 1360; *see also Blalock v. Depuy Orthopedics, Inc.*,  
 26 No. C-11-04746-SBA, 2011 WL 6217540, at \*1 (N.D. Cal. Dec. 14, 2011). Because  
 27 promoting judicial economy is the principle purpose of the Panel, this factor is particularly  
 28

1 important in the stay analysis. *See Good*, 5 F. Supp. 2d at 809. Here, all three factors strongly  
 2 favor a stay.

3 **I. A STAY WILL PROMOTE JUDICIAL ECONOMY BY PREVENTING**  
 4 **DUPLICATIVE LITIGATION AND INCONSISTENT RULINGS**

5 Staying this action while Clinton's motion to centralize and transfer is pending will  
 6 undoubtedly advance the fundamental objective of Section 1407 of conserving judicial  
 7 resources through the centralization of similar cases pending across different federal judicial  
 8 districts. *See, e.g., In re Food Lion, Inc.*, 73 F.3d 528, 531-32 (4th Cir. 1996). Allowing an  
 9 individual action to proceed while the Panel makes a determination on transfer would  
 10 undermine that objective. *See, e.g., Eggart v. A.L.S. Enterprises, Inc.*, No. CV-09-0107-FVS,  
 11 2009 WL 1587904, at \*1 (E.D. Wash. June 2, 2009) ("A stay ensures that there is consistent  
 12 treatment of numerous lawsuits and that judicial resources are not wasted"); *Rivers*, 980 F.  
 13 Supp. at 1360 (holding that, absent a stay, "this Court will have needlessly expended its  
 14 energies familiarizing itself with the intricacies of a case that would be heard by another  
 15 judge").  
 16

17 By contrast, a short stay here will conserve judicial resources by ensuring that seven  
 18 similar actions do not proceed separately before seven judges in different federal district courts  
 19 around the country. *See, e.g., Eggart*, 2009 WL 1587904, at \*1 (holding that a stay pending  
 20 decision by the Panel will "further the policies of judicial economy, efficiency, and  
 21 consistency"); *Gonzalez v. Merck & Co., Inc.*, No. CV-07-3034-LRS, 2007 WL 2220286, at \*2  
 22 (E.D. Wash. Aug. 2, 2007) (holding that case is stayed pending a decision from the Panel  
 23 because of "well settled case law that dictates that a stay should be granted to promote judicial  
 24 economy"); *Walker v. Merck & Co., Inc.*, No. 05-630, 2005 WL 1565839, at \*2 (S.D. Ill. June  
 25 22, 2005) (granting stay because "it is almost certain that the transferee court will hear and  
 26 decide many of the same issues Plaintiffs ask this Court to tackle").  
 27  
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1 In addition, granting a stay will avoid the risk of inconsistent rulings on pretrial  
2 motions. *See, e.g., Blalock*, 2011 WL 6217540, at \*2 (“A stay is generally granted pending  
3 transfer when it would avoid the needless duplication of work and the possibility of  
4 inconsistent rulings.”); *Mailblocks, Inc. v. Spam Arrest, LLC*, No. CV-03-0077, 2003 WL  
5 22319080, at \*2 (W.D. Wash. June 9, 2003) (“The interests of consistency and judicial  
6 economy favor a stay.”).

7  
8 As noted above, the core factual issue in this case overlaps with six other pending  
9 actions that are subject to Clinton’s pending motion before the Panel. This Court should not be  
10 burdened with the duplication of efforts of the eventual transferee court. Accordingly, a stay  
11 will promote judicial economy by avoiding duplicative litigation and inconsistent rulings.

## 12 **II. THE BALANCE OF HARDSHIPS ALSO FAVORS A STAY**

13  
14 The remaining two factors germane to a stay request also weigh in favor of staying the  
15 present action. If this case were permitted to proceed in this Court pending the Panel’s  
16 disposition of Clinton’s motion, Clinton would be required to litigate the same issues and be  
17 subject to the same discovery in this Court as the transferee court. *See, e.g., Blalock*, 2011 WL  
18 6217540, at \*2 (“[T]he potential burden of engaging in duplicative litigation weighs heavily in  
19 favor of staying these proceedings pending MDL transfer); *Fuller v. Amerigas Propane, Inc.*,  
20 Nos. 09-2493, 09-2616, 2009 WL 2390358, at \*2 (N.D. Cal. Aug. 3, 2009) (finding that stay  
21 would not cause any meaningful prejudice to the plaintiff where “both cases for which MDL  
22 treatment is sought are in very early procedural stages,” but “there is some hardship [on the  
23 defendants] associated with the effort required to conduct discovery in multiple cases that may  
24 be rendered pointless or redundant by the decision of the MDL panel”); *Emerson v. Lincoln*  
25 *Elec. Holdings, Inc.*, No. 09-6004-CV-SJ-GAF, 2009 WL 690181, at \*1 (W.D. Mo. Mar. 12,  
26 2009) (“[T]he potential for duplicative motion practice and discovery proceedings demonstrate  
27 that judicial economy and prejudice to the defendants weight heavily in favor of [a] stay.”).

1 Here, the prejudice to Clinton resulting from not staying this case far outweighs any  
2 potential prejudice. Not only would duplicative litigation lead to unnecessary and burdensome  
3 costs, it would expose Clinton to potentially inconsistent rulings.

4 Conversely, H&L would suffer minimal, if any, prejudice from a slight delay in  
5 prosecution of its case. See, e.g., *Mailbocks, Inc.*, 2003 WL 22319080, at \*3 (holding that  
6 “neither party would suffer undue prejudice from a stay” because “[n]one of the pending  
7 motions is particularly pressing” and “the delay resulting from the stay is unlikely to be unduly  
8 lengthy”); *Emerson*, 2009 WL 690181, at \*1 (“potential prejudice to Plaintiffs is minimal”  
9 where duration of the stay – “until the JPML makes its final determination” – “would be  
10 short”); *Lopez v. Tyson Foods, Inc.*, 8:06-CV-459, 2008 WL 4186242, at \*2 (D. Neb. Sept. 8,  
11 2008) (granting stay because plaintiffs would not “suffer any prejudice by a brief stay,” but  
12 defendants, “[i]n contrast,” would be prejudiced by “additional discovery or motion practice”  
13 that could “create duplicative and potentially inconsistent obligations”).

14 Moreover, the fact that this case has only just begun, and H&L has yet to invest  
15 significant time and resources in this proceeding, strongly supports a stay. See *Jones v.*  
16 *Deutsche Bank AG*, No. C 04-5357 JW (RS), 2007 WL 951811, at \*1 (N.D. Cal. Mar. 28,  
17 2007) (acknowledging that risk of prejudice to either party as a result of stay in proceedings is  
18 low at outset of litigation); *Mathis v. Bristol-Myers Squibb Co.*, No. Civ. A. 03-0308, 2003 WL  
19 1193668, at \*1 (E.D. La. Mar. 12, 2003) (granting a motion to stay, pending a decision by the  
20 Panel, premised on the case having been “newly filed”).

21 Simply stated, the prejudice to Clinton without a stay, coupled with considerations of  
22 judicial economy and the risk of inconsistent rulings, far outweighs the possibility of any  
23 minimal prejudice to H&L. See, e.g., *Freisthler v. DePuy Orthopaedics, Inc.*, No. CV 11-6580  
24 DSF, 2011 WL 4469532 (C.D. Cal. Sept. 21, 2011) (granting a stay and concluding that “any  
25 inconvenience to Plaintiff will be minimal and is outweighed by the greater interest in  
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1 promoting consistency and predictability in the entire litigation should this case be  
2 transferred"); *Walker*, 2005 WL 1565839, at \*2 ("[W]hile Plaintiffs might be subjected to some  
3 delay as a result of the issuance of a stay, that prejudice does not outweigh the judicial  
4 economy interests."). For this reason itself, Clinton's motion should be granted. *See*  
5 *Mailblocks, LLC*, 2003 WL 22319080 ("Litigation should be stayed to permit the MDL panel  
6 to decide a motion to consolidate if the stay would achieve gains in judicial economy and  
7 consistency that outweigh the prejudice the parties would suffer from delay.").

### 8 CONCLUSION

9  
10 For the foregoing reasons, respectfully requests this Court to temporarily stay further  
11 proceedings in this action pending resolution of Clinton's motion before the Panel.

12 Dated: May 11, 2012

Respectfully submitted,

13  
14 GEORGE CLINTON

15 By:   
16 Appearing *Pro Se*

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 14, 2012, a copy of the foregoing Clinton's Motion to Stay Proceedings Pending a Decision by the Panel on Multidistrict Litigation or, Alternatively, to Dismiss This Action and Relieve Him from The April 30, 2012 Order for Lack of Service Under Rule 12(b)(4), Rule 12(b)(5), and/or Rule 60(b)(1) as Inadvertence or Surprise was served by regular U.S. mail to the following addresses:

Clerk of Court  
United States District Court for the Western District of Washington  
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/s/ George Clinton  
George Clinton